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Song Teik Kim v Lina ak Dimbad & Anor

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(A)-2533–12 OF 2017
UMI KALTHUM, YAACOB MD SAM AND STEPHEN CHUNG JJCA
13 FEBRUARY 2019

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Legal Profession — Disciplinary Proceedings — Disciplinary Committee decided against appellant — High Court affirmed decision of Disciplinary Committee — Appeal against decision of High Court — Whether Disciplinary Committee's findings outside of subject matter complained — Whether Disciplinary Committee failed to appreciate there was no evidence to support finding of undue influence — Whether punishment imposed by Disciplinary Board inappropriate and ought to be set aside

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The appellant acted for the first respondent as solicitor in her insurance claim arising from the death of her late husband. The claim was settled and paid to Universal Trustee (M) Bhd. On instruction from the appellant, the respondent withdrew part of the settlement sum amounting to RM800,000 to be deposited into a bank account. The appellant then borrowed RM600,000 from the first respondent with a promise to pay interest of RM6,400 a month. The appellant confirmed that he took the loan and had paid interest and refunded a sum of RM100,000 when requested but ceased to pay monthly interest from August 2008 as he had financial difficulties. In June 2010, the first respondent lodged a complaint against the appellant under the Legal Profession Act 1976 after he stopped paying and still owed the principal sum of RM500,000. The second respondent then appointed a Disciplinary Committee to hear the complaint. The Disciplinary Committee decided that: (a) at the time the sum of RM600,000 was paid to the appellant, there was no solicitor-client relationship in existence; and (b) the appellant had failed to conduct himself in a professional manner, knowing full well that there was a conflict of interest since he was a borrower and at the same time was a former solicitor to the first respondent. The first respondent was fined RM50,000. The High Court held that the disciplinary committee's finding of a misconduct was within the scope of the first respondent's complaint as they arose from the facts based on the complaint. The High Court found there was no merit in the appeal and the appellant then appealed to the present court. The appellants submitted the following grounds of appeal: (i) the Disciplinary Committee's findings were not the subject matter of the complaint at all and had fallen into a jurisdictional error; (ii) the Disciplinary Committee failed to appreciate that there was no evidence to support the finding of undue influence which merited the appellant to require to advise that the first respondent of the need for

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independent advice; and (iii) the punishment imposed by the Disciplinary Board was inappropriate and ought to be set aside.

Held, dismissing the appeal, with no cost:

(1) The Disciplinary Committee was correct in its findings. Based on the documents relied on by the Disciplinary Committee, the appellant understood and knew of the complaint. Section 94(3) of the Legal Profession Act 1976 defines 'misconduct' as 'conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounted to grave impropriety'. It was wide enough to include acts and omissions in any capacity other than as an advocate and solicitor. Therefore, it was within the ambit of the complaint. The appellant was found guilty of conduct unbefitting a solicitor (see paras 34–35).

(2) The appellant did not complain of any breach of natural justice or unfairness in the proceedings and the Disciplinary Committee, Disciplinary Board and the High Court had dealt with it. There was no reason to intervene on the findings of the Disciplinary Committee or Disciplinary Board and the decision of the High Court (see para 37).

(3) Any solicitor who discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed by the Disciplinary Committee or Disciplinary Board. The fine of RM50,000 imposed by Disciplinary Board was lawful and within s 103D(2) of the Legal Profession Act 1976. The sentence imposed was in accordance with the principle of proportionality and appropriate to the facts and circumstances of the case. There was no reason to disturb the fine imposed (see paras 38 & 40).

[Bahasa Malaysia summary

Perayu bertindak bagi responden pertama sebagai peguamcara dalam tuntutan insuransnya yang timbul daripada kematian suaminya. Tuntutan telah diselesaikan dan dibayar kepada Universal Trustee (M) Bhd. Atas arahan daripada perayu, responden menarik balik sebahagian dari jumlah penyelesaian berjumlah RM800,000 untuk dimasukkan ke dalam akaun bank. Perayu kemudian meminjam RM600,000 daripada responden pertama dengan janji membayar faedah sebanyak RM6,400 sebulan. Perayu mengesahkan bahawa dia telah mengambil pinjaman itu dan telah membayar faedah dan membayar balik sejumlah RM100,000 apabila diminta tetapi berhenti membayar faedah bulanan dari Ogos 2008 kerana dia mengalami masalah kewangan. Pada Jun 2010, responden pertama membuat aduan terhadap perayu di bawah Akta Profesion Undang-Undang 1976 selepas dia berhenti membayar dan masih berhutang jumlah pokok sebanyak RM500,000. Responden kedua kemudian melantik Jawatankuasa Disiplin

untuk mendengar aduan tersebut. Jawatankuasa Tatatertib memutuskan bahawa: (a) pada masa jumlah RM600,000 telah dibayar kepada perayu, tidak ada hubungan peguamcara-anakguam yang wujud; dan (b) perayu telah gagal membawa diri dengan cara profesional, mengetahui dengan baik bahawa terdapat konflik kepentingan kerana dia seorang peminjam dan pada masa yang sama merupakan bekas peguamcara kepada responden pertama. Responden pertama didenda RM50,000. Mahkamah Tinggi memutuskan bahawa penemuan salah laku Jawatankuasa Tatatertib adalah dalam skop aduan responden pertama yang timbul daripada fakta berdasarkan aduan tersebut. Mahkamah Tinggi mendapati tiada merit dalam rayuan itu dan perayu kemudiannya merayu kepada mahkamah ini. Perayu mengemukakan alasan rayuan berikut: (i) penemuan Jawatankuasa Tatatertib bukanlah perkara utama aduan itu dan telah jatuh ke dalam satu kesalahan bidang kuasa; (ii) Jawatankuasa Disiplin gagal untuk menghargai bahawa tidak ada bukti untuk menyokong dapatan pengaruh tidak wajar yang melayakkan perayu yang menghendaki untuk menasihati bahawa responden pertama dalam keperluan untuk nasihat berasingan; dan (iii) hukuman yang dikenakan oleh Lembaga Tatatertib adalah tidak wajar dan patut diketepikan.

Diputuskan, menolak rayuan, tanpa kos:

(1) Jawatankuasa Tatatertib betul dalam penemuannya. Berdasarkan dokumen yang diandalkan oleh Jawatankuasa Tatatertib, perayu memahami dan mengetahui aduan tersebut. Seksyen 94(3) Akta Profesion Undang-Undang 1976 mentakrifkan 'salah laku' sebagai 'kelakuan atau ketinggalan untuk bertindak di Malaysia atau di tempat lain oleh seseorang peguambela dan peguamcara atas sifat profesionalnya atau selainnya yang dikira sebagai perbuatan tidak patut yang serius'. Ia cukup luas untuk merangkumi perbuatan dan ketinggalan dalam apa-apa keupayaan selain daripada sebagai peguambela dan peguamcara. Oleh itu, ia berada dalam lingkungan aduan. Perayu didapati bersalah berkelakuan seorang peguamcara yang tidak sepatutnya (lihat perenggan 34–35).

(2) Perayu tidak mengadu tentang apa-apa pelanggaran keadilan semulajadi atau ketidakadilan dalam prosiding dan Jawatankuasa Tatatertib, Lembaga Tatatertib dan Mahkamah Tinggi telah mengendalikannya. Tidak ada sebab untuk campur tangan dengan penemuan Jawatankuasa Disiplin atau Lembaga Tatatertib dan keputusan Mahkamah Tinggi (lihat perenggan 37).

(3) Mana-mana peguamcara yang melepaskan tugas profesionalnya dengan apa-apa yang kurang daripada integriti, keberanian dan kepercayaan harus menjangkakan hukuman yang berat akan dikenakan oleh Jawatankuasa Tatatertib atau Lembaga Tatatertib. Denda sebanyak RM50,000 yang dikenakan oleh Lembaga Tatatertib adalah sah dan

A mengikuti s 103(2) Akta Profesion Undang-Undang 1976. Hukuman yang dikenakan adalah mengikut prinsip perkadaran dan sesuai dengan fakta dan keadaan kes itu. Tiada sebab untuk mengganggu denda yang dikenakan (lihat perenggan 38 & 40).]

B **Cases referred to**

Bar Malaysia v Neasarani a/p T Singara Thevar [2015] MLJU 734; [2016] 1 MLRA 120, CA (refd)

Bolton v Law Society [1994] 2 All ER 486, CA (refd)

Dinesh Kanavaji a/l Kanawagi & Anor v Ragumaran a/l N Gopal (Bar Council
C *Malaysia, intervener)* [2016] 5 MLJ 79; [2016] 7 CLJ 667, CA (refd)

Majlis Peguam Malaysia v Hari Krishnan a/l Jeyapalan [2017] 1 MLJ 770, CA (refd)

Majlis Peguam Malaysia v Rajehgopal a/l Velu & Anor [2017] 1 MLJ 596, FC (refd)

D *R Sivabalan a/l A Ramiah v Neoh Lay Cheng (Malaysian Bar Council, intervener)* [2017] 7 MLJ 587, HC (refd)

Legislation referred to

Legal Profession Act 1976 ss 94(3), (4), 100(1)(a), (3)(a), (7), (8), (15),
E 103C(1)(c), 103D, 103D(1), (2), 103E(1), (5)

Appeal from: Originating Summons No WA-17D-13–05 of 2017 (High Court, Kuala Lumpur)

F *Harpal Singh Grewal (Nahvinah Selvaraj with him) (AJ Ariffin Yeo & Harpal) for the appellant.*

Colin Andrew Pereira (Quah Kai Weng with him) (Majlis Peguam Malaysia) for the second respondent.

G **Stephen Chung JCA (delivering judgment of the court):**

BACKGROUND FACTS: BEFORE THE DISCIPLINARY BOARD

[1] The appellant was previously practising as an advocate and solicitor
H under the name and style of Messrs Murthy Song & Partners, Kuala Lumpur.

[2] The appellant acted for the first respondent as solicitor in her insurance claim arising from the death of her late husband. The claim was settled and the settlement sum was paid to Universal Trustee (M) Bhd. On instructions from
I the appellant, the respondent withdrew part of the settlement sum amounting to RM800,000 to be deposited into a bank account.

[3] The appellant then borrowed RM600,000 from the first respondent with a promise to pay her interest of RM6,400 a month commencing April

2005. The appellant confirmed that he took the loan and had paid interest and refunded a sum of RM100,000 when requested but ceased to pay monthly interest from August 2008 as he had financial difficulties.

[4] In June 2010 the first respondent lodged a complaint against the appellant under the Legal Profession Act 1976 after he stopped paying and still owed the principal sum of RM500,000. The Majlis Peguam Malaysia (Bar Council) appointed a discipline committee ('DC') to hear the complaint. After hearing the parties, the documentary evidence and submissions, the DC furnished a report.

[5] In its recommendations in the report, the DC was of the view that at the time the sum of RM600,000 was paid to the appellant, the first respondent was no longer a client of the appellant, hence there was no solicitor-client relationship in existence. Nevertheless bearing in mind that the first respondent still relied on the appellant for advice in handling her monies, the appellant still had influence over the first respondent and the appellant should have asked her to obtain legal advice from another solicitor before entering into the loan agreement. By failing to ask the first respondent to seek legal advice before signing the loan agreement, the appellant had failed to conduct himself in a professional manner, knowing full well that there was a conflict of interest since he was a borrower and at the same time a former solicitor to the first respondent who had trusted him. Nonetheless, failure to repay the loan was a purely civil matter which the first respondent had to seek recourse through the court.

[6] The DC recommended to the disciplinary board ('DB') that the respondent be fined a sum of RM1,000 for professional misconduct in failing to advise the first respondent to seek legal advice before signing the loan agreement. The DB upheld the finding of misconduct but increased the fine to RM50,000.

IN THE HIGH COURT

[7] Being aggrieved with the decision of the DB, the appellant filed an originating summons ('OS') for the following orders that: (a) the decision in order of the disciplinary board and/or the disciplinary committee against the plaintiff/appellant on 15 April 2017 be set aside; and (b) that the penalty of the fine of RM50,000 be set aside.

[8] The grounds for the OS application were as follows: (a) the DC and/or DB in deciding that the appellant ought to have advised the first respondent to seek independent advice was never a complaint to the DB; (b) it was not open to the DB to undertake an enquiry on matters which were not the subject

matter of the complaint; (c) the appellant was not given any opportunity to explain as to why he was not required to proffer unsolicited advice to the first respondent before she signed the loan agreement; (d) the DB had acted disproportionately to the nature of the complaints and in all circumstances of the case when imposing a fine of RM50,000; and (e) there had been a breach of the rules of natural justice.

[9] In her decision, after referring to the facts of the case, the learned High Court judge was of the opinion that the appellant's main complaint was that by substituting a fresh act of misconduct from the original charge that the DC had committed a jurisdictional error. Therefore she posed the question whether the DC had made a finding of a misconduct that were within the scope of the respondent's complaint as they arose from facts based on the complaint which were not disputed by the appellant.

[10] The learned High Court judge found that on the undisputed fact that when the appellant prepared the loan agreement with the first respondent, he did not advise the first respondent to seek advice from a different lawyer. She said even though the first respondent did not state this clearly in her letter of complaint, she was not expected to do so as she was not a legally qualified person. On the other hand, the appellant as the legally qualified person, should have known this and that he should have advised her to seek advice from a different lawyer. She went on to say that from his evidence before the DC, the appellant was equally appraised of this fact, but his excuse was that the first respondent's 'son-in-law could understand the transaction'.

[11] The learned High Court judge was of the considered opinion that since the DC had made a finding of a misconduct that were within the scope of the first respondent's complaint as they arose from facts based on the complaint, which were not disputed by the appellant, the DC could not be said to have acted beyond its jurisdiction and consequently, in affirming the DC's finding on liability, the DB could not be said to be acting without jurisdiction.

[12] The learned High Court judge further stated that from the documents and the notes of evidence before the DC, she found that the appellant had been informed of all the material ingredients and facts relating to the complaint lodged against him and he had given his explanation to exculpate himself. However, the DC did not accept his explanation and this was affirmed by the DB.

[13] The learned High Court judge said that as to whether the DC and DB had erred in rejecting his explanation was not for the court to consider, as the court should not delve into the merits of the said order made by the DC and the DB, referring to the Court of Appeal's case of *Dinesh Kanavaji a/l Kanawagi &*

Anor v Ragumaran a/l N Gopal (Bar Council Malaysia, intervener) [2016] 5 MLJ 79; [2016] 7 CLJ 667. On the issue of proportionality of the sentence, she said this was within the discretion of the DB which this court would not interfere.

[14] The learned High Court judge then proceeded to find no merit in the appellant's appeal and dismissed his appeal with no costs. Hence the appeal before us.

THE APPEAL

The appellant's submission

[15] Counsel for the appellant submitted that the DC's recommendation in paras 2–3 was that the appellant had influence over the first respondent and ought to have asked the first respondent to seek independent advice. This recommendation was not the subject matter of the complaint at all. The first respondent had accepted the loan transaction and it was the non-payment which was an issue. There was no challenge by the first respondent to the appellant's explanation by way of cross-examination and neither did the first respondent registered any protest against the issue of influence or independent advice. There was no cross-examination of the first respondent save and except that she wanted the appellant to return the money which is still owing plus interests.

[16] The appellant submitted that the loan agreement was not challenged before the DC or in any court, and consequently the relationship of the parties was that of a debtor and creditor. It was submitted that the DC recognised that the transaction was a loan and was purely a civil matter and the first respondent has to seek recourse through the court.

[17] It was submitted that the DC fell into error when it held that the appellant was guilty of misconduct for not having asked the first respondent to seek legal advice from another solicitor as it had already come to a finding that there was no solicitor-client relationship in existence and that the failure to repay the loan was purely a civil matter which the first respondent had to seek recourse through the court which meant that effectively the complaint by the first respondent did not amount to misconduct. By substituting a fresh charge of misconduct for the original charge, the DC committed a jurisdictional error. The appellant cited *R Sivabalan a/l A Ramiah v Neoh Lay Cheng (Malaysian Bar Council, intervener)* [2017] 7 MLJ 587 and *Bar Malaysia v Neasarani a/p T Singara Thevar* [2015] MLJU 734; [2016] 1 MLRA 120.

[18] It was submitted that the case of *Majlis Peguam Malaysia v Rajehgopal a/l*

Velu & Anor [2017] 1 MLJ 596 was not applicable to the facts in the instant case because there was no complaint of any undue influence or breach of confidence reposed in the appellant by the first respondent and neither was there any evidence led by her to say that she was influenced to sign the loan agreement to grant the loan to the appellant.

[19] In respect of the penalty, the DC recommended that a penalty of RM1,000 be imposed however the DB increased the said sum to RM50,000. It was submitted that the sum of RM50,000 was excessive and ought to be set aside given the factual matrix of the case and the conduct of the first respondent as follows:

(a) the loan transaction was not challenged and it remains a valid contract between the parties;

(b) there was nothing in the complaint or evidence that the appellant had exercised any undue influence on the first respondent;

(c) the first respondent was advised by son-in laws and the loan was given two days after the request for it by the appellant;

(d) the first respondent's present husband, daughter and relatives numbering at least four to five persons were present in the dealings between the appellant and the first respondent; and

(e) the complainant was paid interests amounting to RM210,400.

Submission by the second respondent

[20] The second respondent submitted that it was not disputed that the appellant was afforded the opportunity to provide his explanation to both the DC and DB and no procedural unfairness had been alleged by the appellant. It was not disputed that the appellant had in fact attended the hearing of the DB and was afforded the opportunity to raise any issues he deemed fit.

[21] It was submitted that the question was whether the appellant had acted in a manner unbecoming of an advocate and solicitor when he obtained the loan from the first respondent without ensuring that she obtained independent legal advice. It was submitted that whenever a solicitor is put in a position in which his own interest conflicts with that of his client, he must advise his client to seek independent legal advice. The failure to advise the first respondent as such was a clear dereliction of duty.

[22] It was submitted that the only way the appellant could have known that the first respondent was in a position to lend him such a vast amount of money was because he was the solicitor acting for the first respondent at the time the

first respondent was paid the settlement sum. This information had been procured by the appellant as solicitor for the first respondent.

[23] It was submitted that the DB did not err when it upheld the findings of the DC. Furthermore, the DB had acted well within its jurisdiction and discretion in increasing the fine imposed on the appellant to RM50,000.

[24] It was further submitted that the learned High Court judge was correct in refraining from disturbing the findings of the DC and the DB and in refraining from varying the sanction imposed.

OUR DECISION

[25] Under s 103D(1) of the LPA, the DB may make an order affirming or rejecting the finding or recommendation of the DC. Pursuant to s 103D(2), the DB may in appropriate cases impose a greater or lesser penalty or punishment than that recommended by the DC. In this case the DB had affirmed the finding of the DC but imposed a penalty of RM50,000 which was greater than the penalty of RM1,000 recommended by the DC. On appeal to the High Court, the learned High Court judge affirmed the decision of the DB.

[26] Pursuant to s 103E(1) of the LPA, any party aggrieved by any final order or decision made by the DB: (a) pursuant to sub-s 94(4); (b) under para 100(1)(a), (3)(a) or sub-ss 100(7) or (8); or (15) under s 103D, shall have the right to appeal to the High Court within a month of the receipt of the notification of that order or decision. Under sub-s (5), any appeal against the decision of the High Court shall lie to the Court of Appeal and thereafter to the Federal Court.

[27] In this appeal, the learned counsel for the appellant submitted three grounds of appeal: (a) that the DC had made a finding which was not the subject matter of the complaint at all and had fallen into a jurisdictional error; (b) that the DC failed to appreciate that there was no evidence to support the finding of undue influence which merited the appellant to require to advise that the first respondent need to have independent advice; and (c) that the punishment imposed by the DB was inappropriate and ought to be set aside.

[28] We referred to the record of appeal. In her letter of complaint dated 28 September 2010, the first respondent stated that on 2 March 2005 the appellant wrote on her behalf to Universal Trustee to withdraw RM800,000 from the Jawing ak Jagit account (the first respondent's late husband's account) and Universal Trustee paid this sum via a SCB cheque 106349 which was deposited into her Hong Leong Bank account on 9 March 2005. The first respondent stated that the appellant then advised her to withdraw RM690,000

from her account to be kept by the appellant, out of which RM90,000 would be given to her to bring back to Sarawak and the balance of RM600,000 to be kept by the appellant. She said the appellant promised her that whatever dividend from the said sum would be paid to her. She said she agreed to go with the appellant to a bank to deposit or invest the money. From April 2005–July 2006, the appellant deposited RM6,400 per month into her account as dividend. After she asked for repayment of RM100,000 in August 2006, the appellant deposited RM5,400 as dividend per month until April 2008. After that she did not receive any more dividend from the appellant and that the appellant still owed RM500,000.

[29] In his explanation to the DB, dated 6 March 2012, the appellant said that the instructions to withdraw the sum of RM800,000 from Universal Trustee was done on the complainant's and/or her agent's express request because they complained of the complexity of calculation of low interest, irregular payment of interest and high service and management charges imposed by Universal Trustee. In the next paragraph, he said the complainant and her agents decided to lend him the sum of RM600,000 on a personal basis at an agreed monthly interest rate of RM6,400. He said a friendly loan agreement was then prepared, executed on 11 March 2005 and a copy extended to them. He said at no material time did he take undue advantage and/or misrepresented, misled, cheated or a trustee to the complainant.

[30] Although the appellant asserted that the first respondent decided to lend him a personal loan of RM600,000 and it was a friendly loan, based on a RHB Bank deposit slip dated 11 March 2005, a sum of RM636,000 was deposited into an account of Murthy Song & Partners and not into his personal account. After she was shown the explanation letter of the appellant, the first respondent wrote a letter to the DB, dated 13 March 2012, stating that, as far as she knew, she had never seen and did not know of the loan agreement.

[31] Based on the notes of hearing on 4 November 2014 at 2.30pm before the DC, the appellant did not produce the loan agreement. He explained that he tried to locate the loan agreement but despite his efforts he had not been able to do so. He said he could have misplaced the document while moving office. He called it a friendly loan because there was no interest provided in the agreement. If that was true, why did he pay interests to the first respondent? All these raised questions in our minds about the so-called friendly loan and what actually transpired on that day.

[32] It was not in dispute that since 1991 the appellant had acted as solicitor for the first respondent in her negligence claim against insurers of a barge which sank in the sea and her husband died in that accident. In 1992 there was an out of court settlement and the first respondent received RM1.8m which was paid

into her SCB account. The first respondent is a housewife from Sarawak. The appellant confirmed that she is illiterate and affixed her thumbprint when she was required to sign documents. Since then, the first respondent and her family had come to rely and depend on the appellant for their legal and financial matters and advice. The appellant also confirmed that the first respondent was not advised by another lawyer for the loan transaction and he did not tell them to seek advice from a different lawyer because her son-in-law could understand the transaction.

[33] Based on the factual matrix, their solicitor-client relationship for many years, and his training and experience as a solicitor, these should have alerted the appellant of a possible conflict of interest situation or of a complaint of taking unfair advantage of a former client and he should have advised her to seek separate independent advice instead of getting her to agree to the loan and to get her to sign the loan agreement without giving her an opportunity or time to think it over. Any right-thinking member of the Bar in the circumstances would not have asked nor taken the loan from her.

[34] In her letter dated 28 September 2010, the first respondent complained that the appellant advised her to withdraw RM690,000. She used the words '… Peguam Song Teik Kim nasihatkan saya untuk keluarkan RM690,000 daripada akaun Hong Leong Bank saya untuk disimpan oleh beliau'. Although not in exact words, the appellant understood and knew of the complaint and it was telling in his reply that he said 'At no material time, did I take undue advantage and/or misrepresented, misled cheated or a trustee to the complainant'. The DC was entitled to rely on the documents before it to come to its findings.

[35] On the facts, these answered the appellant's submission that he had no influence over the first respondent and that there was no requirement to ask her to seek independent advice. These were within the ambit of the complaint. Section 94(3) of the LPA defines 'misconduct' to mean 'conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety'. It has been held that this definition is wide enough to include acts and omissions in any capacity other than as an advocate and solicitor. The appellant was found guilty of conduct unbefitting a solicitor. Therefore the DC was correct in its finding.

[36] The DC being a collegiate of peers must be allowed to make findings of facts based on their experience in the profession under any given circumstances and the court must not substitute itself in the position of the DC in its appellate role. The apex court held that the court should only interfere with the finding of facts and recommendations of the DC: (a) when the findings were manifestly perverse; (b) the DC/DB had failed as right-thinking members of

A the Bar to give due consideration to the facts of the case and the conduct of the solicitor complained against; and (c) there had been a breach of natural justice: *Dinesh Kanavaji a/l Kanawagi & Anor v Ragumaren a/l N Gopal (Majlis Peguam, intervener)*.

B **[37]** In this appeal the appellant did not complain of any breach of natural justice or unfairness in the proceedings and the DC/DB and the High Court had dealt with this. On the facts and submissions before us, there was no reason to intervene on the findings of the DC/ DB and the decision of the High Court.

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[38] Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed by the DC/DB: see *Bolton v Law Society* [1994] 2 All ER 486. The fine of RM50,000 imposed by the DB was lawful and within s 103D(2) of the LPA.

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[39] Section 103C(1)(c) provides for the following possible penalties or punishments by the DC: (a) reprimand or censure; (b) imposition of a fine not exceeding fifty thousand ringgit; (c) suspension from practice; or (d) striking out the advocate and solicitor off the roll. This subsection provides a scale from the lowest to the maximum penalties or punishments. In this case the appellant was not suspended from practice nor was he struck off the roll. There was also no order of restitution.

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[40] Notwithstanding the fact that the DB did not give any written grounds, on the factual matrix of the case, the role of the appellant, the first respondent being an illiterate housewife, their solicitor-client relationship for many years, the trust by the first respondent on the appellant, the huge sum of money involved and the failure by the appellant to act with integrity and propriety, the sentence imposed was in accordance with the principle of proportionality and appropriate to the facts and circumstances of the case: see *Majlis Peguam Malaysia v Hari Krishnan a/l Jeyapalan* [2017] 1 MLJ 770. There was no reason to disturb the fine imposed.

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[41] As there were no merits in the appeal, the appeal was dismissed without costs. Deposit was ordered to be refunded.

Appeal dismissed with no costs.

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Reported by Mohd Kamarul Anwar